IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

WP(C).No. 29 of 2007(C)

OS.15/2005 of MUNSIFF COURT, PUNALUR
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PETITIONER:
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1. MARIAMMA, W/O. KUNJAPPAN,
BABU VILASOM BUNGLOW, PUNALUR.

2. BABU, S/O. KUNJAPPAN,
BABU VILASOM BUNGLOW, PUNALUR.

BY ADV. SRI.S.SREEKUMAR
SRI.P.K.SOYUZ

RESPONDENTS:
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1. SUKU, S/O. KUNJAPPAN,
ALAMKARATH HOUSE, PANANGADU, VALAKKODU VILLAGE,
PUNALUR.

2. JOSE GEORGE, S/O. GEORGE,
OTTAPALAMOOTTIL, PUNALUR.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 1/1/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.29 OF 2007

Dated 1st January 2007

JUDGMENT

Petitioners are plaintiffs. Respondents are the defendants in O.S.15/2005 on the file of Munsiff court, Punalur. This petition is filed under Article 227 of Constitution of India challenging Ext.P6 order whereunder the application filed under Order VI Rule 17 of Code of Civil Procedure to amend the plaint was dismissed by the trial court on the sole ground that petition is highly belated as it was filed after the evidence was closed. Case of petitioners was that in the plaint itself the document exempted by first defendant in favour of second defendant to be set aside in the suit was described as document No.4052/04 of S.R.O, Punalur which was admitted by defendants in the written statement and only after examination of plaintiff, when defendants produced certified copy of that document, its number number was known as 6326/04 instead of 4052/04 and hence application was filed to correct the mistake and trial court did not

consider the application on merit and instead dismissed it as belated and therefore Ext.P6 order is to be quashed.

2. On hearing the learned counsel appearing for petitioners and going through Ext.P6 order, it is clear that learned Munsiff has not considered the application for amendment in the proper perspective. The question whether for a proper decision in the suit, it is just and necessary to allow the amendment was not at all considered. Suit now stands posted for argument after closing the evidence. In such circumstances, notice to respondent is dispensed with. Ext.P6 order is quashed. Learned Munsiff is directed to consider I.A.2508/06 on merits and pass appropriate order in accordance with law. Petition shall not be dismissed for the ground of delay. When the suit itself is to set aside the document, for the mistake in describing the document, which description was admitted by the defendant in the written statement, the application for amendment of the plaint shall not be disallowed on the ground of delay. Learned Munsiff to consider whether the amendment sought

for is necessary for just decision of the case and if necessary the application is to be allowed.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.